

No. 23-1078

---

**In the United States Court of Appeals  
for the Fourth Circuit**

---

B.P.J., by her next friend and mother; HEATHER JACKSON,  
*Plaintiffs-Appellants,*  
*v.*

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON COUNTY  
BOARD OF EDUCATION; WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES  
COMMISSION; W. CLAYTON BURCH, in his official capacity as  
State Superintendent; DORA STUTLER, in her official capacity as  
Harrison County Superintendent,  
*Defendants-Appellees,*  
*and*

THE STATE OF WEST VIRGINIA; LAINEY ARMISTEAD,  
*Intervenors-Appellees.*

---

On Appeal from the United States District Court for the  
Southern District of West Virginia, No. 2:21-cv-00316  
The Honorable Joseph R. Goodwin, Judge

---

**MOTION OF *AMICUS CURIAE* INDEPENDENT WOMEN'S LAW  
CENTER FOR LEAVE TO FILE BRIEF SUPPORTING  
APPELLEES AND AFFIRMANCE**

---

Jennifer C. Braceras  
INDEPENDENT WOMEN'S LAW CENTER  
1802 Vernon Street NW, Suite 1027  
Washington, DC 20009  
Telephone: (202) 807-9986  
jennifer.braceras@iwf.org

Gene C. Schaerr  
*Counsel of Record*  
Cristina Martinez Squiers  
Annika Boone Barkdull  
SCHAERR | JAFFE LLP  
1717 K Street NW, Suite 900  
Washington, DC 20006  
Telephone: (202) 787-1060  
gschaerr@schaerr-jaffe.com

*Counsel for Amicus Curiae Independent Women's Law Center*

May 3, 2023

---

The Independent Women's Law Center (IWLC) moves for leave to file the attached *amicus* brief in support of Defendants-Appellees and affirmance. Fed. R. App. P. 29(a).

This motion is unopposed. All parties except for Defendant-Appellee the West Virginia Secondary School Activities Commission (WVSSAC) consented to the filing of IWLC's *amicus* brief. WVSSAC took no position on the filing of the brief, and stated that it does not intend to file an opposition.

### **INTERESTS OF *AMICUS CURIAE***

IWLC is a project of Independent Women's Forum (IWF), a nonprofit, non-partisan 501(c)(3) organization founded by women to foster education and debate about legal, social, and economic policy issues. IWF promotes access to free markets and the marketplace of ideas and supports policies that expand liberty, encourage personal responsibility, and limit the reach of government, especially with respect to matters of particular concern to women. IWLC supports this mission by advocating for equal opportunity, individual liberty, and women's sex-based rights. Equal opportunity for girls and women to compete in sports

is an issue of great significance to IWLC, and *Amicus* writes to offer its expertise on that important issue.

### **REASONS FOR PERMITTING THE *AMICUS* BRIEF**

The attached brief explains the harm reversal would pose to women and girls' athletics. Title IX was enacted to expand educational opportunities for women and girls, including in athletics—not to reduce them. Interpreting Title IX to require schools to open up girls' teams to biological males would defeat that purpose.

*Amicus* submits this brief to explain the public interest in single-sex sports, to detail the harms caused by this Court's injunction against West Virginia Code § 18-2-25d(c)(1) ("Sports Act"), and to explain how reversal would undermine the legal rationale for any single-sex athletic teams. Those issues are critical to the proper interpretation of Title IX and the Equal Protection Clause and the disposition of this case.

### **CONCLUSION**

For the foregoing reasons, the Court should grant the motion for leave to file the *amicus curiae* brief of Independent Women's Law Center.

Dated: May 3, 2023

Respectfully submitted,  
s/ Gene C. Schaerr  
Gene C. Schaerr  
*Counsel of Record*  
Cristina Martinez Squiers  
Annika Boone Barkdull\*  
SCHAERR | JAFFE LLP  
1717 K Street NW, Suite 900  
Washington, DC 20006  
Telephone: (202) 787-1060  
gschaerr@schaerr-jaffe.com

Jennifer C. Braceras  
INDEPENDENT WOMEN'S LAW CENTER  
1802 Vernon Street NW, Suite 1027  
Washington, DC 20009  
Telephone: (202) 807-9986  
jennifer.braceras@iwf.org

*Counsel for Amicus Curiae*  
*Independent Women's Law Center*

\*Not yet admitted in D.C.

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this motion complies with the type-volume limits of Fed. R. App. P. 27(d)(2)(A) because it contains 332 words, excluding the portions exempted by the rules. The brief's typesize and typeface comply with Fed. R. App. P. 32(a)(5) and (6) because it was prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook, 14-point font.

Dated: May 3, 2023

*s/ Gene C. Schaerr*  
Gene C. Schaerr